


UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

FILED
SCRANTON

NOV 19 2013

PER 
DEPUTY CLERK

MARCELINO AVILA,

Petitioner,

v.

SUPERINTENDENT TRITT, et al.,

Respondents.

CIVIL ACTION NO. 3:13-CV-1547

(Judge Kosik)

MEMORANDUM AND ORDER

AND NOW, this 19th day of November, 2013, IT APPEARING TO THE
COURT THAT:

(1) Petitioner, Marcelino Avila, a prisoner confined at the State Correctional Institution at Frackville, Frackville, Pennsylvania, filed the instant petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on June 11, 2013;

(2) In his petition, petitioner challenges his September 21, 2006 conviction for statutory rape, corruption of minors and indecent assault, and, his December 20, 2006 sentence of 8 to 18 years. Petitioner raises two (2) grounds: (1) ineffective assistance of counsel for failing to provide bilingual assistance to understand the guilty plea colloquy; and (2) prejudicial inducement of guilty plea by the court;

(3) The action was assigned to Magistrate Judge Thomas M. Blewitt for Report and Recommendation;

(4) On October 17, 2013, the Magistrate Judge issued a Report and Recommendation (Doc. 14) wherein he recommended that the petition for writ of habeas corpus be denied and dismissed and the motion for appointment of counsel (Doc. 13) be denied;

(5) Specifically, the Magistrate Judge found that ground (2) of the habeas corpus petition was not exhausted and should be dismissed for procedural default; and, ground (1) of the habeas corpus petition, ineffective assistance of counsel, should be denied on the merits;

(6) Petitioner has failed to file timely objections to the Magistrate Judge's Report and Recommendation.

AND, IT FURTHER APPEARING THAT:

(7) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a de novo review of his claims. 28 U.S.C. § 636(b)(1)(C); Thomas v. Arn, 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. Henderson v. Carlson, 812 F. 2d 874, 878 (3d Cir. 1987).

(8) We have considered the Magistrate Judge's Report and we concur with his recommendation.

(9) After reviewing the petition, we agree with the Magistrate Judge that the petitioner's claims regarding ineffective assistance of counsel should be denied on the merits, and the claims regarding inducement of a guilty plea by the court were procedurally defaulted. We also agree that the motion for appointment of counsel (Doc. 13) should be denied.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Thomas M. Blewitt dated October 17, 2013 (Doc. 14) is **ADOPTED**;

(2) The Petitioner's petition for writ of habeas corpus is **DENIED AND DISMISSED**;

(3) The motion for appointment of counsel (Doc. 13) is **DENIED**;

(4) The Clerk of Court is directed to **CLOSE** this case and to forward a copy of this Memorandum and Order to the Magistrate Judge; and,

(5) Based on the court's conclusion herein, there is no basis for the issuance of a certificate of appealability.



Edwin M. Kosik
United States District Judge